

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1989 - HB 2154

February 24, 2018

SUMMARY OF BILL: Reduces the number of reasons, for which a non-participating manufacturer (NPM) would be excluded from the Tobacco Product Manufacturing Directory (TPMD), for failure to pay an escrow payment governed by the Master Settlement Agreement (MSA).

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – This legislation could subject non-participating manufacturers (NPMs) to a rate adjustment, and as a result, a recalculation of Master Settlement Agreement (MSA) payments made by participating members due to their loss of market share to NPMs. The extent and timing of any rate adjustment is subject to arbitration and cannot be reasonably determined; however, any such rate adjustment is estimated to result in a significant recurring decrease of MSA payments to the state.

Assumptions:

- Pursuant to Tenn. Code Ann. § 67-4-2602(a), every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Commissioner of the Department of Revenue (DOR) a certification to the Commissioner and Attorney General and Reporter, no later than the 30th day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer, or is in full compliance with Tenn. Code Ann. § 47-31-103.
- Pursuant to Tenn. Code Ann. § 67-4-2602(b), the DOR maintains a directory listing all tobacco product manufacturers that have provided current and accurate certifications.
- Being excluded from the directory excludes any such manufacturer from selling cigarettes in Tennessee.
- Pursuant to Tenn. Code Ann. § 47-31-103(a), any tobacco product manufacturer selling cigarettes to consumers within the State of Tennessee must either become a participating member into the MSA and perform certain financial obligations or become a NPM and make certain escrow payments.
- Pursuant to Tenn. Code Ann. § 67-4-2602(b)(2), the Commissioner of the DOR is prohibited from including or retaining in the directory the name or brand families of any

NPM that have failed to make any required escrow payment or any outstanding judgement, including interest on such judgment.

- This legislation will require any NPM's exclusion from the directory, for a failure to make any required escrow payment, be due to a result of sales made by or on behalf of such NPM.
- This legislation will require any NPM's exclusion from the directory for a failure to make payments on an outstanding judgment, be due to the NPM's failure to, make a payment on a judgment imposed against such NPM.
- According to the DOR, this legislation will affect the Department's ability to enforce both the TPMD statute and the escrow statutes, as required by the MSA.
- According to the DOR, failure to enforce these requirements could subject Tennessee to an NPM rate adjustment, and as a result, a recalculation of settlement payments by participating members due to their loss of market share to NPMs. The amount of a potential NPM adjustment is subject to arbitration and cannot be reasonably estimated; however, any such adjustment is estimated to result in a significant loss in state revenue.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/jdb